THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.20715 OF 2003

DATE: 13th November 2006

Between:

Laxminarayan Rathi,
Son of late Sri Kanhaiahlal,
Aged 53 years, Occupation: business,
R/o H.No.20-3-420 to 423,
Hussaini Alam, Hyderabad.

... Petitioner.

And

1. Municipal Corporation of Hyderabad,
   rep. by its Commissioner,
   Municipal Complex, Tank Bund Road,
   Hyderabad and another.

... Respondents.

* * *

ORDER:

The writ petition is filed for a writ of Mandamus declaring the inaction on the part of the respondents in not considering 20 per cent of reduction in property tax as per Section 212 of the Hyderabad Municipal Corporation Act, 1955, as arbitrary and illegal; and to direct the respondents to give 20 per cent reduction in the property tax and pass such other suitable orders.

2. It is stated that aggrieved by the letter of the Additional Commissioner, South Zone, Municipal Corporation of Hyderabad,

dated 28.2.2001, bearing No.62/A1/TC2/ MCH/2000, fixing the property tax at Rs.67,360/- from Rs.27,999/-, in respect of premises bearing No.20-3-420 to 423, situated at Hussaini Alam, Hyderabad, the petitioner preferred an appeal against the first respondent under Section 282 of the Hyderabad Municipal Corporation Act, 1955 (herein after in short referred as 'the Act') bearing M.A.No.56 of 2001, on the file of the Chief Judge, City Small Causes Court, at Hyderabad. It is also stated that the learned Chief Judge, City Small Causes Court, vide orders dated 20.01.2003 was pleased to allow the appeal partly as under.

> " In the result, the appeal is partly allowed directing the respondent to issue fresh demand notice on the 70% of the enhanced annual rental value as per the lease deed and collect the tax with effect from 01.10.2000 and not from 01.04.1999. A copy of the lease deed filed by the appellant shall be furnished to the respondent within 15 days of disposal of this appeal. It shall also be open for the appellant to calculate the property tax in the lines suggested above and remit the property tax for the period under demand and in such an event the respondent shall receive the same under regular receipt subject to arithmetical objections, if any. Accordingly, this impugned demand notice is set aside. No costs."

It is also stated that as per the orders of the learned Chief Judge, City Small Causes Court, Hyderabad, the petitioner sent a letter to the second respondent on 28.02.2003 by registered post with acknowledgement due in which the petitioner had calculated the property tax. It is further stated that in reply to the said letter, the second respondent addressed a letter dated 07.3.2003 bearing

No.62/A5/TC2/MCH 2003, fixing the annual tax at Rs.47,152/- and demanded to pay property tax of Rs.47,875. It is also further stated that the petitioner again gave a representation to the second respondent on 12.3.2003 reiterating that the annual tax works out to Rs.38,808/- (excluding the library cess) and the petitioner had paid the amount as per his calculation and subsequently on 31.3.2003 the petitioner paid the library cess also calculating @ 8 per cent on the property tax of Rs.38,808/- amounting to Rs.7,760/-. It is further stated that in pursuance of the orders of the learned Chief Judge, City Small Causes Court, Hyderabad, both in interim application and in final judgment in M.A.No.56 of 2001, the petitioner paid a total sum of Rs.1,18,780/- under 5 receipts which is inclusive of arrears upto 31.3.2003 and there is no due. In reply to the said letter, the respondent addressed a letter dated 26.3.2003 bearing letter No.062/TC2/MCH 2003 stating that if the petitioner desires to avail 20 per cent of deduction in property tax towards the age of the building which is more than 25 years, as per the provision of Section 212 of the Act, the petitioner shall have to produce copy of the documentary evidence, such as permit for the construction of building issued by Municipal Corporation of Hyderabad, failing which production of such evidence, the tax so fixed and communicated by the second respondent being enforced and the petitioner would be liable to pay the dues of tax.

3. It is further stated that the second respondent without considering the orders of the High Court of Andhra Pradesh again failed to consider petitioner's request for reduction of 20 percent in

the property tax and demanded balance of tax amount forthwith vide its letter dated 07.5.2003. It is further stated that on 09.6.2003 the petitioner addressed a letter reiterating that the age of the building being more than 25 years, the petitioner is entitled to 20 percent of reduction in property tax towards the age of the building. It is also stated that in the absence of non-mentioning of the finding/reason/opinion, whatsoever, whether the building is 25 years old or not, the demand for payment of property tax is illegal, unlawful and arbitrary. It is also stated that the petitioner requested the second respondent to re-verify the records at its end in fixing property tax giving its findings/reason/opinion as per its own documents and also the order passed by the High Court of Andhra Pradesh. Though the said letter was duly served on the second respondent, the second respondent had not considered his request and again issued a letter dated 05.7.2003 demanding payment of balance of property tax.

4. It is also further stated that after thorough search for documents, the petitioner could lay hands on the receipt issued by the Municipal Corporation of Hyderabad towards building permit fee dated 29.10.1973, triplicate copy of permit No.98/100 dated 17.5.1974, Notice of the respondents under Section 452 of the Hyderabad Municipal Corporation Act dated 26.7.1974, another notice of the respondents under Section 686 of the Hyderabad Municipal Corporation Act dated 29/30-7-1974. It is also stated that since the documents are of 1974-1976, they could not be located in his counsel' s office during the relevant point of time while corresponding with the second respondent. The clerks and

staff who were there at that relevant point of time 1974-1976 are not now in the office of his earlier counsel who had filed this case. It is further stated that only upon receiving the last letter from Municipal Corporation of Hyderabad, by setting aside all his engagements, the petitioner searched for documents in his old counsel' residence and also in the office of his Chartered Accountant.

5. It is also stated that as per law as the age of the building being more than 25 years, the petitioner is entitled to 20 percent reduction in property tax, which is also agreeable, by the respondents as per the letter of the second respondent dated 26.3.2003. In proof of his contention that the age of the building is more than 25 years, the petitioner is relying upon the receipt issued by the Municipal Corporation of Hyderabad towards building permit fee, notices issued by the Municipal Corporation of Hyderabad under Section 452 as well as 686 of the said Act. That apart, the petitioner is also relying upon the orders of the High Court of Andhra Pradesh in W.P.M.P.No.7998 of 1974 in W.P.No.5084 of 1974 and also judgment in W.P.No.5084 of 1974.

6. Section 212 of the Act deals with rateable value how to be determined reads as hereunder.

> "212. Rateable value how to be determined:--
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> (1)(a): The annual rental value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to be let from month to month or from year to year with reference to its location, type of construction, plinth area, age of the

building, nature of use to which it is put and such other criteria as may be prescribed;

(b) the annual rental value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year, less a deduction at the rate of 10% for buildings aged upto 25 years; and 20% for the buildings aged above 25 years; of that portion of such gross annual rent which is attributable to the buildings, apart from their sites and adjacent lands occupied as an appurtenance thereto and the said deduction shall be in lieu of all allowances for repairs or on any other account whatsoever.

Provided that a rebate of 40 percent of the annual rental value shall be allowed in respect of the residential buildings occupies by the owner inclusive of the deduction permissible elsewhere.

(2) Any vacant land not exceeding three times the plinth area of the building including its site or a vacant land to the extent of one thousand square meters, whichever is less shall be deemed to be adjacent premises occupied as an appurtenant to the building, and assessed to tax in accordance with the provisions of this section and the area, if any in excess of the said limit shall be deemed to be land not occupied by or adjacent and appurtenant to such building and the tax shall be levied thereon at two percent of the estimated capital value of land;

(3) All plant and machinery contained or situate in or upon any building or land and belonging to any of the classes specified from time to time by public notice by the Commissioner with the approval of the corporation, shall be deemed to form part of such building or land for the purpose of fixing the rateable value thereof under Sub-section (1).

(4) A statement setting out clearly the class of plant and machinery specified under Sub-section (3) and describing in detail what plant and machinery falls within each such class shall be prepared by the Commissioner under the direction of the Standing Committee and shall be open to inspection at all reasonable hours by members of the public at the Chief Office of the Municipal Corporation.

(5) Printed copies of the statement prepared under sub-section (3) shall be kept at the Chief Office of the Municipal Corporation for sale at such price as the Commissioner may fix."

7. It is stated that the material, which is being placed before this Court, was not placed before appropriate authority, and hence, in the light of this material the appropriate authority had no occasion to consider the same.

8. After hearing the both sides, this Court is of the considered opinion that in the light of the facts and circumstances well explained, the writ petition is disposed of directing the second respondent to re-consider the whole issue in the light of the additional material placed before this Court and further liberty is given to the petitioner to produce additional material placed before this Court, if any, to substantiate his stand in this regard. On such production, the second respondent to re-consider the whole issue and decide the same in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

9. Accordingly, the writ petition is allowed to the extent

indicated above. No order as to costs.

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13-11-2006

BSB